

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
INITIAL STATEMENT OF REASONS FOR PROPOSED REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 180.2
Title 14, California Code of Regulations
Re: Trap Destruction Devices

I. Date of Initial Statement of Reasons:

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: April 4, 2003
Location: Visalia, CA

(b) Adoption Hearing: Date: June 20, 2003
Location: Mammoth Lakes, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

Existing law (Section 180.2, Title 14, CCR) requires that every trap used to take finfish, mollusks, or crustaceans by California commercial fishermen must contain a Department approved trap destruction device to serve as an escape hole or mechanism should a trap be lost. The section also specifies trap destruction device opening requirements; defines a sunset date of July 15, 2003, at which time the allowance that more than a single mesh may protrude into the destruct device opening would expire; and defines materials approved for use as destruct material attachments.

Trap destruction devices are important to protect marine organisms when a trap is lost. Lost traps may continue to fish until they fall apart. In order to prevent lost traps from continuing to fish indiscriminately, a passive destruct device must be built into each trap. A lost trap is disabled by deterioration of the destruction device.

Commercial fishing traps are lost for a variety of reasons. Trap loss most commonly occurs due to adverse sea conditions, such as strong waves and wind and/or severe storms. Additionally, loss of visible identification of the trap's location contributes to trap loss. Trap buoy lines and floats which identify a trap's location can be cut by vessel propellers of ship traffic traveling through the fishing grounds, caught in currents, tangled with other fishing equipment, or deliberately

sabotaged.

The commercial fishery for Dungeness crab occurs in northern and central California. The central California fleet consists of approximately 100 vessels that utilize an area of over 400 square miles from the mouth of the Russian River to Avila-Morro Bay. Dungeness fishing grounds in northern California extend from Fort Bragg to the Oregon border encompassing an approximately 800 square-mile area. The fleet size in northern California averages approximately 330 vessels per season. Washington and Oregon also have large Dungeness crab fishing fleets, with some out-of-state fishermen who fish California waters.

Prior to the start of the 2001-2002 Dungeness crab season, an issue arose regarding the legal definition of a trap destruct device opening. As an operational practice, some northern California Dungeness crab fishermen had been creating a destruct device opening by cutting and removing wire meshes but leaving a "V" or "W" of wire mesh (referred to by the industry as bars) protruding into the required 5-inch diameter opening. Cotton twine is then tied to the points of the protruding Vs or Ws, lacing the opening closed in a manner that replaced the removed wire mesh with the cotton twine. The cotton twine erodes over time and, therefore, serves as the destruct device material which renders the trap as non-lethal should the trap be lost at sea.

At the October 25, 2002 Commission meeting in Crescent City, the Department proposed regulation amendments that included a provision for a 5-inch destruct device opening while allowing a single wire mesh ("V") to protrude into the destruct device opening to serve as an anchor point for the destruct attachment material. The Department believed that the proposed language would address concerns regarding commercial Dungeness crab fishery operational practices while meeting the biological needs for an escape device. However, northern California commercial Dungeness crab fishermen maintained that due to the construction style of their traps that utilizes a smaller mesh size than that utilized in other locations of the State, it was necessary to allow up to three meshes to protrude into the destruct device opening. This alternative allows for the continuation of the operational practices of some northern California Dungeness crab fishermen who create their destruct device openings by cutting and removing wire meshes but leaving a single wire mesh (a "V") protruding into the opening on one side and up to two individual wire meshes (a "W") protruding into the opening on the other side.

To address the concerns of the northern California commercial Dungeness crab fishermen, the Commission approved the alternative language proposed by the industry, providing for the allowance of up to three meshes to protrude into the destruct device opening. Associated with the adoption of the regulation revisions, the Commission also adopted a sunset date of July 15, 2003, at which time the regulations would revert to allow no more than a single mesh to protrude into the destruct device opening. Further, at the adoption hearing, the

Commission directed the Department to conduct a biological study to examine the effect of multiple protruding meshes within the destruct device opening. Due to budgetary constraints, the Department has not yet been able to conduct this study. As a result, the Department proposes a regulatory amendment to extend the sunset date from July 15, 2003 to July 15, 2006.

As described above, the regulatory intent of the 5-inch destruct device opening is to allow for the escapement of finfish and crustaceans (crabs) and to render a trap inoperable should it become lost at sea. A biological review of historic field studies conducted by the Department and by the State of Oregon indicated that a 5-inch diameter opening is sufficient for the release/escapement of adult Dungeness crab, the largest of the crustacean species targeted by these traps. However, studies need to be conducted that address the optimal size of a destruct device opening for the release/escapement of finfish which might enter a trap to feed on bait. The ability of a finfish to discern a destruct device opening that is obscured by up to three protruding meshes remains unknown. This biological knowledge is necessary in order for the Commission to make a determination regarding the adoption of regulations that would provide for the permanent allowance of up to three meshes to protrude into the destruct device opening. The Department, therefore, proposes a regulatory amendment that would allow for the extension of the sunset date of the reversion of the trap destruct device regulation. Pending the outcome of this study, the Commission will make a final determination regarding the permanent adoption of regulatory language which would allow up to three meshes, rather than a single mesh, to protrude into the destruct device opening.

In addition to the proposed revisions pertaining to the Dungeness crab fishery, the Department has proposed other minor changes to Section 180.2, Title 14, CCR, for clarity purposes. The proposed regulatory language revisions clarify that the bare metal crimps described under Section 180.2 (b) (3) are to be uncoated. Additionally, the reference to "J clips" has been struck as this term is antiquated and no longer used.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 8500 and 9003, Fish and Game Code.

Reference: Sections 8500, 9003 and 9008, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

NONE

(d) Identification of Reports or Documents Supporting Regulation Change:

None were identified.

(e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The Department has been working with representatives from the Pacific Coast Federation of Fishermen's Associations, Fishermen's Marketing Association, Del Norte Fishermen's Marketing Association, Humboldt Fishermen's Marketing Association, Bodega Bay Marketing Association, and individual fishermen on amending this section.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The Department analyzed the alternative of eliminating the sunset date and permanently allowing for up to three meshes to protrude into the destruct device opening.

This alternative was rejected because the Department does not support the elimination of a sunset date without conducting a biological study to determine an optimal configuration of Dungeness trap destruct device openings. The Department maintains that such studies are necessary in order to assess the potential impacts to finfish resources.

(b) No Change Alternative:

Should the existing sunset date of July 15, 2003 not be extended, an unknown number of Dungeness crab fishermen would have to modify the destruct openings on their traps before the start of the season on November 15, 2003 in central California and December 1, 2003 in northern California.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result

from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete With Businesses in Other States.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The principal proposed regulatory changes provide for an extension of a sunset date for the reversion of the regulations defining trap destruction device opening requirements. At the time the sunset date becomes effective, the allowance for more than a single mesh to protrude into the destruct device opening will expire. The extension of the sunset date will require no action on the part of the California Dungeness crab fishermen or related businesses. The additional proposed regulatory changes are minor language revisions for clarity purposes only. Subsequently, there will be no direct or indirect economic impacts associated with any of the regulatory changes proposed.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None

- (c) Cost Impacts on a Representative Private Person or Business:

The Commission is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

- (e) Other Nondiscretionary Costs/Savings to Local Agencies:

None

(f) Programs Mandated on Local Agencies or School Districts:

None

(g) Costs Imposed on Any Local Agency or School District That Is Required To Be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None

(h) Effect on Housing Costs:

None

Informative Digest/Policy Statement Overview

Existing regulations in Section 180.2, Title 14, CCR, require that all traps used for commercial fishing in California must contain a trap destruction device and lists the approved destruct attachment materials. The specifications for the device approved for use in Dungeness crab traps are contained in two identically numbered subsections (subsection 180.2(c)). One of these sections is current law and was intended to become inoperative on July 16, 2003. At this time, the replacement section was to become operative.

These proposed regulatory changes would extend the effective period of the currently active subsection 180.2(c), from July 16, 2003 to July 16, 2006. Its replacement subsection 180.2(c) would become effective July 16, 2006. This date extension is necessary for the Department of Fish and Game to adequately study these trap destruction devices.

Also proposed are regulatory changes to better define subsection (b)(3). These changes would add the word “uncoated” to better describe the bare metal clips used as the destruct material on traps, and would remove an out-dated phrase “J clips”.

